

a resolution⁽⁹⁾ for the consideration of the House. The resolution authorized him to make available to the U.S. attorney, in response to a discovery order issued by a federal district court pursuant to Rule 16 of the Federal Rules of Criminal Procedure, for the purpose of inspection and copying by parties in a pending criminal action,⁽¹⁰⁾ certain enumerated committee papers and documents. The resolution was agreed to.

§ 17.10 Where certain employees and former employees of a House committee were named parties defendant in a federal civil action and had received discovery orders and interrogatories, a question of the privilege of the House was invoked.

On Mar. 2, 1971,⁽¹¹⁾ Mr. Richard H. Ichord, of Missouri, rising to a question of the privilege of the House, offered a resolution⁽¹²⁾ for the consideration of the House. The resolution authorized specified employees and former employees of the Committee on In-

ternal Security to testify and produce certain documents in response to discovery orders and written and oral interrogatories served on them as parties defendant in a civil action⁽¹³⁾ pending before the U.S. District Court for the Northern District of Illinois. The previous question was immediately moved on the resolution. Mr. Abner Mikva, of Illinois, objected to the vote because a quorum was not present. On a call of the roll pursuant to Rule XV, the resolution was agreed to.

§ 18. Authorization to Respond to Process

When the Clerk or other officer of the House is served with a subpoena duces tecum when the House is in session, the House ordinarily deals with each subpoena by resolution on an individual basis. During periods of adjournment, however, the current practice is to authorize the officer in receipt of such a court order to appear (but not to take original documents of the House) pursuant to a resolution providing continuing authority to respond during that period. The court may be provided with copies of House documents except

9. H. Res. 459.

10. *U.S. v Stamler, Hall, and Cohen*, Criminal Action No. 67 CR 393, 67 CR 394, 67 CR 395 (U.S.D.C. No. 1). Ill).

11. 117 CONG. REC. 4584-93, 92D Cong. 1st Sess.

12. H. Res. 264.

13. Civil Action File No. 65 C 800, 65 C 2050 (U.S.D.C. No. D. Ill.).

those taken in executive session, upon the court's determination of their relevancy.

Prior to the 80th Congress, it was not the custom for the House to agree to resolutions providing continuing authority for the Clerk or other House officers to respond to subpoenas duces tecum during periods of adjournment. From the 80th through the 83d Congresses, resolutions were adopted providing for continuing authority to respond to subpoenas duces tecum where the court issuing the subpoena required the documents for use in cases relating to the refusal of witnesses to testify before congressional committees. These resolutions pertained only to subpoenas issued by courts of the United States.

For example, the 80th Congress approved a resolution which provided that when, during that Congress, a subpoena duces tecum was directed to the Clerk or any officer or employee of the House from any court of the United States considering a case based on the refusal of a witness to appear or testify before a congressional committee, the Clerk or other officer was authorized to appear but not with any documents. The courts were, however, given permission to make copies of relevant documents.⁽¹⁴⁾ In the second session of

the 83d Congress, the House adopted a similar resolution which could be invoked during any period of adjournment of that Congress.⁽¹⁵⁾

In the 84th and subsequent Congresses, the House approved of resolutions that provided that when documentary evidence under the control of the House was needed in any court of justice during any recess or adjournment of that Congress, the Clerk or other House officer was authorized to appear in answer to a subpoena duces tecum but not to take documents. The courts were given permission to make copies of documents (except for executive session materials) upon the issuance of a court order declaring their relevancy.⁽¹⁶⁾

See also H. Res. 864, 96 CONG. REC. 15636, 81st Cong. 2d Sess., Sept. 22, 1950; H. Res. 481, 97 CONG. REC. 13777, 82d Cong. 1st Sess., Oct. 20, 1951; and H. Res. 391, 99 CONG. REC. 11132, 83d Cong. 1st Sess., Aug. 3, 1953.

15. H. Res. 711, 100 CONG. REC. 15547, 83d Cong. 2d Sess., Aug. 20, 1954.

16. H. Res. 341, 101 CONG. REC. 13063, 84th Cong. 1st Sess., Aug. 2, 1955. See also H. Res. 416, 103 CONG. REC. 16759, 16760, 85th Cong. 1st Sess., Aug. 30, 1957; and H. Res. 224, 105 CONG. REC. 5260, 86th Cong. 1st Sess., Mar. 25, 1959.

14. H. Res. 584, 94 CONG. REC. 5433, 80th Cong. 2d Sess., May 6, 1948.

Speaker's Power to Authorize Response to Process

§ 18.1 On one occasion, the House by resolution authorized the Speaker to permit House officers and employees to appear in response to subpoenas issued by a U.S. District Court in connection with an investigation being conducted by a grand jury.

On Oct. 19, 1967,⁽¹⁷⁾ communications from the Clerk of the House and the chairman of a House committee were presented to the House advising that they were in receipt of subpoenas issued by the U.S. District Court for the District of Columbia. Mr. Carl Albert, of Oklahoma, offered a resolution⁽¹⁸⁾ giving the Speaker authorization to permit certain officers and employees to respond to the subpoenas. The resolution provided:

Whereas in the investigation of possible violations of Title 18, United States Code, Sections 201, 287, 371, 641, 1001 and 1505, a subpoena ad testificandum was issued by the United States District Court for the District of Columbia and addressed to W. Pat Jennings, Clerk of the House of Representatives, directing him to appear before the grand jury of said court

on October 23, 1967, to testify in connection with matters under investigation by the grand jury; and

Whereas other officers and staff employees of the House of Representatives have received, or may receive, subpoenas ad testificandum to appear before the said grand jury in connection with the before-mentioned investigation; and

Whereas information secured by officers and staff employees of the House of Representatives pursuant to their official duties as such officers or employees may not be revealed without the consent of the House: Therefore be it

Resolved, That W. Pat Jennings, Clerk of the House of Representatives, is authorized to appear in response to the subpoena before-mentioned as a witness before the grand jury; and be it further

Resolved, That the Speaker of the House of Representatives is authorized to permit any other officer or employee of the House who is in receipt of or shall receive a subpoena ad testificandum in connection with the proceedings conducted by the grand jury before-mentioned to appear in response thereto; and be it further

Resolved, That a copy of these resolutions be transmitted to the said court.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Parliamentarian's Note: The U.S. attorney had advised the Speaker that several officers and employees of the House might be subpoenaed to appear and testify

17. 113 CONG. REC. 29374-76, 90th Cong. 1st Sess.

18. H. Res. 950.

before the federal grand jury in connection with its investigation into possible violations of the Criminal Code. Rather than have each officer and employee authorized by separate resolution, the Speaker was given the authority to authorize such appearances. Each officer and employee who thereafter received a subpoena in connection with the grand jury proceedings informed the Speaker who then responded with a written authorization.

Duration of Authorization

§ 18.2 Where one Congress has, by resolution, authorized a Member to appear in response to a subpoena issued by a federal court, and the court's proceedings extend into the next Congress, the Member must again obtain permission of the House if he still wishes to respond to the subpoena.

On Apr. 13, 1961,⁽¹⁹⁾ the Chair recognized Mr. James Roosevelt, of California, on a question of privilege:

MR. ROOSEVELT: Mr. Speaker, I rise to a question of the privilege of the House.

19. 107 CONG. REC. 5844, 87th Cong. 1st Sess. See also 107 CONG. REC. 2480, 87th Cong. 1st Sess., Feb. 21, 1961.

THE SPEAKER:⁽²⁰⁾ The gentleman will state it.

MR. ROOSEVELT: Mr. Speaker, during the 86th Congress, the House authorized me to appear in response to a subpoena issued by the U.S. District Court for the District of Columbia, directing me to appear in Washington, D.C., to testify in the case of the United States of America against Martin Popper.

The case was originally scheduled for trial on June 21, 1960, but was adjourned and is now scheduled to begin on April 25, 1961.

Under the precedents of the House, I am unable to comply with this subpoena without the consent of this House, the privileges of the House being involved. I, therefore, submit the matter for the consideration of this body.

Mr. Speaker, I send to the desk the subpoena.

THE SPEAKER: The Clerk will read the subpoena.

After the Clerk read the subpoena, the House agreed to a resolution⁽²¹⁾ offered by Mr. John W. McCormack, of Massachusetts, authorizing the Member to appear in response to the subpoena.

§ 18.3 The Clerk having notified the House that he had been authorized by the preceding Congress to appear as a witness and to produce specified documents in a certain case and that the case

20. Sam Rayburn (Tex.).

21. H. Res. 254.

was still in progress, the House passed a resolution permitting his further appearance as a witness.

On Mar. 27, 1961,⁽²²⁾ the Speaker⁽¹⁾ laid before the House as a matter involving a question of the privilege of the House the following communication from the Clerk:

MARCH 24, 1961.

*The Honorable the SPEAKER,
House of Representatives.*

SIR: As the Clerk of the House of the 86th Congress I received, from the U.S. District Court for the Southern District of New York, two subpoenas duces tecum, one in the case of Peter Seeger (criminal No. C-152-240), and the other in the case of Elliott Sullivan (criminal No. C-152-238). Both subpoenas directed me to appear before said court as a witness in these cases and to bring with me certain and sundry papers therein described in the files of the House of Representatives.

This matter was brought to the attention of the last House, as a result of which House Resolutions 476 and 477 were adopted on March 15, 1960.

Since the development of these cases has extended into the 87th Congress and it is well recognized that each House controls its own papers, this matter is presented for such action as the House, in its wisdom, may see fit to take.

22. 107 CONG. REC. 4917-19, 87th Cong. 1st Sess.

1. Sam Rayburn (Tex.).

Respectfully yours,

RALPH R. ROBERTS,
Clerk, U.S. House of Representatives.

After a reading of the subpoena to the House, Mr. John W. McCormack, of Massachusetts, offered a resolution⁽²⁾ authorizing the Clerk to appear in response to the subpoena but permitting the production of certified copies of only those subpoena House papers and documents subsequently determined by the court to be material and relevant.

Authorization During Recesses and Adjournments

§ 18.4 The House may, by resolution, authorize court appearances while prohibiting the disclosure of minutes or transcripts of committee executive sessions in response to subpoenas served upon Members, officers, or employees during recesses and adjournments.

On Jan. 13, 1973,⁽³⁾ Mr. Thomas P. O'Neill, Jr., of Massachusetts, offered for immediate consideration the following resolution:⁽⁴⁾

2. H. Res. 234.

3. 119 CONG. REC. 30, 31, 93d Cong. 1st Sess. For similar authorizing resolutions adopted by recent Congresses see 117 CONG. REC. 16, 92d Cong. 1st Sess., Jan. 21, 1971; 115 CONG. REC. 37, 91st Cong. 1st Sess., Jan. 3, 1969; and 113 CONG. REC. 35, 90th Cong. 1st Sess., Jan. 10, 1967.

4. H. Res. 12.

Whereas, by the privileges of this House no evidence of a documentary character under the control and in the possession of the House of Representatives can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession except by its permission: Therefore be it

Resolved, That when it appears by the order of any court in the United States or a judge thereof, or of any legal officer charged with the administration of the orders of such court or judge, that documentary evidence in the possession and under the control of the House is needful for use in any court of justice or before any judge or such legal officer, for the promotion of justice, this House will take such action thereon as will promote the ends of justice consistently with the privileges and rights of this House; be it further

Resolved, That during any recess or adjournment of its Ninety-third Congress, when a subpoena or other order for the production or disclosure of information is by the due process of any court in the United States served upon any Member, officer, or employee of the House of Representatives, directing appearance as a witness before the said court at any time and the production of certain and sundry papers in the possession and under the control of the House of Representatives, that any such Member, officer, or employee of the House, be authorized to appear before said court at the place and time named in any such subpoena or order, but no papers or documents in the possession or under the control of the House of Representatives shall be produced in response thereto; and be it further

Resolved, That when any said court determines upon the materiality and the relevancy of the papers or documents called for in the subpoena or other order, then said court, through any of its officers or agents, shall have full permission to attend with all proper parties to the proceedings before said court and at a place under the orders and control of the House of Representatives and take copies of the said documents or papers and the Clerk of the House is authorized to supply certified copies of such documents that the court has found to be material and relevant, except that under no circumstances shall any minutes or transcripts of executive sessions, or any evidence of witnesses in respect thereto, be disclosed or copied, nor shall the possession of said documents and papers by any Member, officer, or employee of the House be disturbed or removed from their place of file or custody under said Member, officer, or employee; and be it further

Resolved, That a copy of these resolutions be transmitted by the Clerk of the House to any of said courts whenever such writs of subpoena or other orders are issued and served as aforesaid.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 19. Providing for Legal Counsel

Legal counsel, through the Department of Justice, is made available to the officers—but not